



CANDIS CHARLENE MORTON, PRO SE
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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CANDIS CHARLENE MORTON,
PRO SE

Plaintiff,

vs.

PEOPLE'S CHOICE HOME LOAN,
AMERICA'S SERVICING COMPANY
AND FIRST AMERICAN LOANSTAR,

Defendants.

CASE NO.

'08 CV 1112 DMS LSP

**EX PARTE APPLICATION AND
SUPPORTING DECLARATION OF
(NAME OF PLAINTIFF) FOR
TEMPORARY RESTRAINING ORDER/
PRELIMINARY INJUNCTION AND
ORDER TO SHOW CAUSE, AND
CERTIFICATION**

Plaintiff, CANDIS CHARLENE MORTON, Pro Se, hereby applies
for an Ex Parte Temporary Restraining Order/Preliminary
Injunction against the named Defendants PEOPLE'S CHOICE HOME
LOAN, AMERICA'S SERVICING COMPANY, and FIRST AMERICAN LOANSTAR
and as grounds therefore would state as follows:

1. Plaintiff requests a temporary restraining Order to
enjoin and restrain the Defendant(s) named herein, their agents,
servants and employees from scheduling or executing a proposed
Trustee's sale on June 24, 2008 in regard to a non-judicial

1 foreclosure action without judicial oversight and without a
2 valid Court Order, relating to an alleged Notice of Default
3 12/23/2007 filed in the San Diego County Recorder's Office
4 number 20079134009592, and further to require PEOPLE'S CHOICE,
5 AMERICA'S SERVICING and FIRST AMERICAN LOANSTAR to appear and
6 show cause why the relief requested in this application should
7 not be granted, and to produce in open Court the original
8 promissory note with all endorsements and attachments to
9 establish Defendant(s) right and entitlement to conduct said
10 non-judicial Trustee's Sale.

11 2. Plaintiff has filed contemporaneously herewith a
12 Complaint for Violation of the Truth in Lending Act, which
13 Complaint is currently pending before the District Court.
14 Plaintiff requests that this Honorable Court enjoin and restrain
15 the execution of any non-judicial Trustee's sale pending the
16 resolution of the Plaintiff's claims as set forth in
17 Plaintiff(s) Complaint for Truth in Lending violations. Attached
18 hereto and made a part hereof as Plaintiff's Exhibit "A" is a
19 copy of said Complaint.

20 3. This application is made pursuant to the Federal Rules
21 of Civil Procedure. Plaintiff is entitled to the relief
22 requested, including but not necessarily limited to enjoining
23 and restraining the Defendants from executing a Proposed
24 Trustee's Sale of the subject property on June 24, 2008, pending
25 resolution of Plaintiff's claims on the merits.

26 4. The executing by Defendant(s) of proposed Trustee's
27 sale on June 24, 2008 would fall outside of the authority of the
28 Defendant(s) if said Defendant(s) are unable to produce the

1 original signed promissory note with all attachments showing
2 their legal entitlement to schedule and conduct said Trustee's
3 sale. Should said sale be permitted to go forward without the
4 proper legal authority and entitlement to do so, Plaintiff would
5 be irreparably injured in that Plaintiff would lose all right,
6 title and interest in and to her unique real property, would
7 lose all of her equity in the subject property, would lose the
8 right of possession and to live in the subject property,
9 including but not limited to her right of quiet enjoyment of the
10 property, would be uprooted and her family would be uprooted
11 from the community, and would suffer great personal injury,
12 including but not limited to defamation of Plaintiff's credit,
13 the infliction of emotional distress upon Plaintiff and other
14 injury and damages personal to Plaintiff. Plaintiff will suffer
15 these injuries, even if her claims are meritorious, unless
16 Defendant is enjoined and restrained. Once Plaintiff has
17 suffered the injury, any pecuniary amount would be inadequate to
18 compensate Plaintiff for her injuries, making said injury
19 irreparable.

20 5. Plaintiff further contends that Defendants have not
21 properly applied Plaintiff's payments to the account maintained
22 by Defendants, and may have made incorrect interest rate
23 adjustments, that the actual interest rate of 7.990% was above
24 the interest rate listed in Plaintiff's Good Faith Estimate,
25 incorrect tax impound amounts and may have otherwise misapplied
26 Plaintiff's payments. Plaintiff further requests that Defendants
27 appear and provide a detailed analysis of the amount Defendants
28 contend is due and owing on the note and deed of trust at issue.

1 Unless and until Defendants can provide said detailed account as
2 to the amount Defendants contend is due and owing, Defendants
3 should not be permitted to conduct the proposed Trustee's sale
4 on June 24, 2008, which would be in derogation of the rights of
5 Plaintiff.

6 6. Plaintiff would be entitled to damages to compensate
7 Plaintiff for all detriment proximately caused by the wrongful
8 conduct of the servicer or Trustee pursuant to California Civil
9 Code Section 3333. Until this Court is able to make such a
10 determination, Defendants should be enjoined from going forward
11 with the proposed Trustee's sale on June 24, 2008.

12 7. Plaintiff(s) has no other adequate remedy at law.

13 8. Plaintiff requests that this Honorable Court grant the
14 relief on an ex parte basis without notice to the other side, in
15 that the threatened proposed Trustee's sale is imminent, and
16 there is insufficient time for Defendants to be heard in
17 opposition prior to the threatened injury taking place. Further,
18 were Defendants given advance notice concerning this relief,
19 Defendants would, in all probability, seek to accelerate the
20 injuries sought to be apprehended.

21 9. The relief requested should be granted because the
22 injury and harm that would be suffered by Plaintiff is greater
23 than the potential injury or harm to Defendants, and when
24 balanced, the greater harm would be suffered by Plaintiff and
25 the equities in this matter tip in favor of the Plaintiff.

26 10. The public interest would be served in the
27
28

1 granting the requested relief would protect the public from
2 wrongful foreclosure, predatory lending practices, and other
3 violations of Federal and California law, including Deceptive
4 and Unfair Trade Practices in the conduct of the mortgage
5 lending business, and would prevent homeowners in the community
6 from summarily, without any judicial oversight, losing their
7 homes and from becoming homeless and becoming a burden on the
8 community.
9

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11 11. Attached hereto and in support of this application for
12 Ex Parte Temporary Restraining Order/Preliminary Injunction and
13 Order to show cause is Plaintiff's sworn Declaration attesting
14 to the truthfulness of the facts and allegations contained in
15 this application.
16

17 12. Plaintiff requests that this Honorable Court grant
18 the requested relief without bond in that Plaintiff is unable to
19 afford or to pay a bond of any kind or type, and that such a
20 Bond requirement would have an inequitable effect on the ability
21 of Plaintiff and other members of the public to obtain redress
22 of their grievances through the Courts and would have a
23 negative effect on public access to the Courts.
24

25 13. Other grounds to be argued ore tenus.
26

27 **VERIFICATION**

28 I, the plaintiff herein, do hereby verify under penalty of
perjury, that I have read the foregoing Application and that the

1 facts and allegations contained therein are true and correct.

2 Dated this 23rd day of June, 2008.

3 Candis Charlene Morton
4 Candis Charlene Morton
5 Affiant

6 **CERTIFICATE OF SERVICE**

7
8 I (WE) HEREBY CERTIFY that a true and correct copy of the
9 Foregoing Application for Ex Parte Temporary Restraining Order/
10 Preliminary Injunction has been furnished to the following
11 Defendants by U.S. mail, with sufficient postage attached, this
12 23rd day of June, 2008.

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17 National City, CA 91950
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